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CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 3041

**Introduced by Committee on Natural Resources (Wayne (Chair),
Dickerson, Harman, Jackson, Keeley, Koretz, Lowenthal,
Pavley, and Wyman)**

March 13, 2002

An act to amend Sections 21082.1, 21083, and 21091 of the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 3041, as amended, Committee on Natural Resources. Environmental quality: use of State Clearinghouse by lead agencies.

(1) The existing California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires

a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment, if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA also requires any draft EIR, EIR, or negative declaration prepared pursuant to CEQA be prepared directly by, or under contract to, a public agency, and requires the lead agency to circulate draft documents that reflect its independent judgment to appropriate state agencies for review. CEQA defines a responsible agency as a public agency other than a lead agency that has responsibility for carrying out or approving a project, and existing guidelines adopted by the Office of Planning and Research define a trustee agency as a state agency that has jurisdiction by law over natural resources affected by a project that are held in trust for the people of the state. Existing guidelines require each lead agency to submit draft EIRs and negative declarations to the State Clearinghouse in order to be distributed to applicable state agencies for review, and require each lead agency to submit not less than 10 copies of draft EIRs and negative declarations to the State Clearinghouse, unless the State Clearinghouse approves a lower number in advance.

This bill would require any mitigated negative declaration prepared pursuant to CEQA to be prepared directly by, or under contract to, a public agency. The bill would require each lead agency to submit a sufficient number of copies of a draft EIR, proposed negative declaration, or proposed mitigated negative declaration to the State Clearinghouse for review and comment by state agencies, and to submit a copy of that document in an electronic form, if ~~the~~ a state agency is the lead agency, a responsible agency, trustee agency, or otherwise has jurisdiction over the project, or if the project is of statewide, regional, or areawide environmental significance. By imposing additional duties on local lead agencies, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

SECTION 1. Section 21082.1 of the Public Resources Code is amended to read:

21082.1. (a) Any draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration prepared pursuant to the requirements of this division shall be prepared directly by, or under contract to, a public agency.

(b) This section is not intended to prohibit, and shall not be construed as prohibiting, any person from submitting information or other comments to the public agency responsible for preparing an environmental impact report, draft environmental impact report, negative declaration, or mitigated negative declaration. The information or other comments may be submitted in any format, shall be considered by the public agency, and may be included, in whole or in part, in any report or declaration.

(c) The lead agency shall do all of the following:

(1) Independently review and analyze any report or declaration required by this division.

(2) Circulate draft documents that reflect its independent judgment.

(3) As part of the adoption of a negative declaration or a mitigated negative declaration, or certification of an environmental impact report, find that the report or declaration reflects the independent judgment of the lead agency.

(4) Submit a sufficient number of copies of the draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration, and a copy of the report or declaration in an electronic form as required by the guidelines adopted pursuant to Section 21083, to the State Clearinghouse for review and comment by state agencies, if any of the following apply:

(A) A state agency is any of the following:

- (i) The lead agency.
- (ii) A responsible agency.
- (iii) A trustee agency.

(B) ~~The~~ A state agency otherwise has jurisdiction by law with respect to the project.

1 (C) The proposed project is of sufficient statewide, regional, or
2 areawide environmental significance as determined pursuant to
3 ~~Section 15206 of Title 14 of the California Code of Regulations.~~
4 *the guidelines certified and adopted pursuant to Section 21083.*

5 SEC. 2. Section 21083 of the Public Resources Code is
6 amended to read:

7 21083. (a) The Office of Planning and Research shall prepare
8 and develop proposed guidelines for the implementation of this
9 division by public agencies. The guidelines shall include
10 objectives and criteria for the orderly evaluation of projects and the
11 preparation of environmental impact reports and negative
12 declarations in a manner consistent with this division.

13 (b) The guidelines shall specifically include criteria for public
14 agencies to follow in determining whether or not a proposed
15 project may have a “significant effect on the environment.” The
16 criteria shall require a finding that a project may have a
17 “significant effect on the environment” if any of the following
18 conditions exist:

19 (1) A proposed project has the potential to degrade the quality
20 of the environment, curtail the range of the environment, or to
21 achieve short-term, to the disadvantage of long-term,
22 environmental goals.

23 (2) The possible effects of a project are individually limited but
24 cumulatively considerable. As used in this paragraph,
25 “cumulatively considerable” means that the incremental effects
26 of an individual project are considerable when viewed in
27 connection with the effects of past projects, the effects of other
28 current projects, and the effects of probable future projects.

29 (3) The environmental effects of a project will cause
30 substantial adverse effects on human beings, either directly or
31 indirectly.

32 (c) The guidelines shall include procedures for determining the
33 lead agency pursuant to Section 21165.

34 (d) The guidelines shall include criteria for public agencies to
35 use in determining when a proposed project is of sufficient
36 statewide, regional, or areawide environmental significance that
37 a draft environmental impact report, a proposed negative
38 declaration, or a proposed mitigated negative declaration shall be
39 submitted to appropriate state agencies, through the State
40 Clearinghouse, for review and comment prior to completion of the

1 environmental impact report, negative declaration, or mitigated
2 negative declaration.

3 (e) The Office of Planning and Research shall develop and
4 prepare the proposed guidelines as soon as possible and shall
5 transmit them immediately to the Secretary of the Resources
6 Agency. The Secretary of the Resources Agency shall certify and
7 adopt the guidelines pursuant to Chapter 3.5 (commencing with
8 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
9 Code, which shall become effective upon the filing thereof.
10 However, the guidelines shall not be adopted without compliance
11 with Sections 11346.4, 11346.5, and 11346.8 of the Government
12 Code.

13 SEC. 3. Section 21091 of the Public Resources Code is
14 amended to read:

15 21091. (a) The public review period for a draft
16 environmental impact report shall not be less than 30 days. If the
17 draft environmental impact report is submitted to the State
18 Clearinghouse for review, the review period shall be at least 45
19 days, and the lead agency shall provide a sufficient number of
20 copies of the document to the State Clearinghouse for review and
21 comment by state agencies.

22 (b) The public review period for a proposed negative
23 declaration or proposed mitigated negative declaration shall not be
24 less than 20 days. If the proposed negative declaration or proposed
25 mitigated negative declaration is submitted to the State
26 Clearinghouse for review, the review period shall be at least 30
27 days, and the lead agency shall provide a sufficient number of
28 copies of the document to the State Clearinghouse for review and
29 comment by state agencies.

30 (c) Notwithstanding subdivisions (a) and (b), if a draft
31 environmental impact report, proposed negative declaration, or
32 proposed mitigated negative declaration is submitted to the State
33 Clearinghouse for review and the period of review by the State
34 Clearinghouse is longer than the public review period established
35 pursuant to subdivision (a) or (b), whichever is applicable, the
36 public review period shall be at least as long as the period of review
37 by the State Clearinghouse.

38 (d) (1) The lead agency shall consider any comments it
39 receives on a draft environmental impact report, proposed

1 negative declaration, or proposed mitigated negative declaration
2 if those comments are received within the public review period.

3 (2) (A) With respect to the consideration of comments
4 received on a draft environmental impact report, the lead agency
5 shall evaluate any comments on environmental issues that are
6 received from persons who have reviewed the draft and shall
7 prepare a written response pursuant to subparagraph (B). The lead
8 agency may also respond to comments that are received after the
9 close of the public review period.

10 (B) The written response shall describe the disposition of any
11 significant environmental issue that is raised by commenters. The
12 responses shall be prepared consistent with Section 15088 of Title
13 14 of the California Code of Regulations, as those regulations
14 existed on June 1, 1993.

15 (e) (1) Criteria for shorter review periods by the State
16 Clearinghouse for documents that must be submitted to the State
17 Clearinghouse shall be set forth in the written guidelines issued by
18 the Office of Planning and Research and made available to the
19 public.

20 (2) Those shortened review periods shall not be less than 30
21 days for a draft environmental impact report and 20 days for a
22 negative declaration.

23 (3) Any request for a shortened review period shall only be
24 made in writing by the decisionmaking body of the lead agency to
25 the Office of Planning and Research. The decisionmaking body
26 may designate by resolution or ordinance a person authorized to
27 request a shortened review period. Any designated person shall
28 notify the decisionmaking body of this request.

29 (4) Any request approved by the State Clearinghouse shall be
30 consistent with the criteria set forth in the written guidelines of the
31 Office of Planning and Research.

32 (5) A shortened review period shall not be approved by the
33 Office of Planning and Research for any proposed project of
34 statewide, regional, or areawide environmental significance as
35 determined pursuant to Section 21083.

36 (6) Any approval of a shortened review period shall be given
37 prior to, and reflected in, the public notice required pursuant to
38 Section 21092.

39 (f) Prior to carrying out or approving a project for which a
40 negative declaration has been adopted, the lead agency shall

1 consider the negative declaration together with any comments that
2 were received and considered pursuant to paragraph (1) of
3 subdivision (d).

4 SEC. 4. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 a local agency or school district has the authority to levy service
7 charges, fees, or assessments sufficient to pay for the program or
8 level of service mandated by this act, within the meaning of
9 Section 17556 of the Government Code.

